

**GRANT COUNTY
LAND USE HEARING EXAMINER**

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|-------------------------------|---|-------------------------------|
| IN THE MATTER OF |) | FINDINGS OF FACT, |
| |) | CONCLUSIONS OF LAW, |
| P19-0222 |) | DECISION AND |
| Western Sub RSA (US Cellular) |) | CONDITIONS OF APPROVAL |
| |) | |

THIS MATTER having come on for hearing in front of the Grant County Hearing Examiner on August 14, 2019, the Hearing Examiner having taken evidence hereby submits the following Findings of Fact, Conclusions of Law, Decision and Conditions of Approval as follows:

I. FINDINGS OF FACT

1. This is an application for a Conditional Use Permit to allow the development of a Wireless Communication Facility (WCF) on an approximately 1.5-acre parcel. The WCF will include a 50-ft. tall (54-ft overall height) Monopole Wireless Facility, associated antennas, and ground-level support equipment within a 30-ft. x 30-ft. chained fence compound. Zoning is Rural Village Commercial.
2. The proponent is Western Sub RSA (US Cellular), Agent: Tracy Malone, Faulk & Foster, 678 Front Street NW, Suite 215, Grand Rapids, MI 49504.
3. The site address of the subject parcel is 3 Desert Aire Dr. SW, Mattawa, WA 99349. The site is located in the East half of the Southwest quarter of Section 23, Township 14N, Range 23E, W.M., Grant County, WA. Parcel #02-1508-000.
4. The zoning for the property is Rural Village Commercial.
5. The zoning for neighboring parcels is: to the north, Rural Village Commercial; to the south, Rural Village Commercial; to the east, Rural Village Commercial; to the west, Rural Village Open Space Conservation.
6. The Comprehensive Plan designation for the subject property is Rural Village.
7. An Environmental Review was completed by Grant County Development Services. A SEPA Mitigated Determination of Non-Significance was issued on July 29, 2019.
8. The subject parcel was reviewed for Critical Areas and was found to have a Wetland as shown on the National Wetland Inventory mapping located adjacent to the tower site. A review by the Administrative Official indicated the area has historically been a developed community park with a depressed area not meeting a wetland of concern. No other critical areas were found to be located within 300 feet of the site.

9. A Public Notice containing information on this project was published in the Columbia Basin Herald on July 11, 2019, was mailed to property owners within 300 feet of the subject property, and was posted on the subject property. Information on this project was also mailed to applicable agencies of jurisdiction for their review and comment.
10. The following agencies and County departments provided comments
 - 10.1 Grant County Fire Marshal responded on July 9, 2019.
 - 10.2 Grant County Public Works Department responded on July 10, 2019.
 - 10.3 Grant County Assessor's Office responded on July 10, 2019.
11. The following agencies were notified but did not respond:
 - 11.1 Grant County Building Official.
 - 11.2 Grant County Treasurer's Office.
 - 11.3 Grant County Health District.
 - 11.4 Grant County Auditor's Office.
 - 11.5 Grant County Emergency Management.
 - 11.6 Grant County Noxious Weed Board.
 - 11.7 Grant County P.U.D.
 - 11.8 WA State Dept. of Fish and Wildlife (Ephrata).
 - 11.9 US Dept. of Fish and Wildlife.
 - 11.10 WA State Dept. of Ecology (Olympia).
 - 11.11 Grant County Fire District #14.
 - 11.12 Federal Aviation Administration.
 - 11.13 Federal Communications Commission.
 - 11.14 WA State Dept. of Transportation.
 - 11.15 WA State Dept. of Transportation (Aviation Division).
 - 11.16 WA State Dept. of Arch & Historic Preservation.
 - 11.17 Colville Confederated Tribes.
12. No public comments were received.
13. The application was determined to be Technically Complete on July 8, 2019.
14. This proposal was processed as a Type III Quasi-Judicial Decision, in accordance with Chapter 25.04 "Permit Application and Review Procedures" and Chapter 25.08 "Conditional Uses and Variances" of the Grant County Unified Development Code.
15. This proposal was reviewed for compliance with Chapter 24.08 "Critical Areas and Cultural Resources" of Grant County Unified Development Code. The project site is considered previously disturbed by an existing community park in close proximity. The site was not required to obtain a "Wetland Delineation".

16. The proposal is not located within an Urban Growth Area of any city.
17. The project site is located in the Rural Village Commercial Zoning District.
18. Pursuant to GCC 23.04 Table 5, a new wireless communications tower is subject to a Conditional Use Permit in the Rural Village Commercial Zoning District of Grant County.
19. A site visit was conducted on July 8, 2019 by GC Development Services Staff.
20. Information about this application was sent to all applicable agencies of jurisdiction for their review and comments. Agency comments and/or requirements specific/applicable to this proposal have been included as Conditions of Approval. No adverse comments were expressed by any agency that would prohibit development.
21. The Hearing Examiner finds the proposed subdivision complies with the Criteria of Approval findings for a subdivision as outlined below:
 - 21.1 The proposed use **will not** be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan.
 - 21.1.1 Applicant Response:

The proposed use is in keeping with the Grant County Code and the Comprehensive Plan.
 - 21.1.2 Staff Response:

The proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan. The project will be required to comply with all relevant development and performance standards of the Grant County Unified Development Code.
 - 21.2 The proposal **is** appropriate in design, character and appearance with the goals and policies for the land use designation in which the proposed use is located.
 - 21.2.1 Applicant Response:

The proposed use is located in a parking lot. In order to serve the community the pole must be located within the community. The location was selected by the home owners' association with the association members' interests in mind. The parcel underwent a zoning designation review for the purposes of this proposal.
 - 21.2.2 Staff Response:

The proposal is appropriate in design, character and appearance with the goals and policies for the applicable land use designation. Section 4.4.3.8 of the Comprehensive Plan states that Limited Areas of More Intense Rural Development are meant to have development at urban densities, they can possess urban services, and contain a mix of uses that are traditional considered more urban than rural. These areas may contain public facilities and services, but they must be limited to what is necessary to serve the limited area and such that low density sprawl does not occur. This proposed use is designed to serve the community it is placed in.

- 21.3 The proposed use **will not** cause significant adverse impacts on the human or natural environments that cannot be mitigated by conditions of approval.
- 21.3.1 Applicant Response:
- Environmental reviews have been conducted. The results of the environmental review were favorable to the project. The pole location was selected carefully. There are no emissions. The facility is unmanned. The area of improvement is well defined and has a small footprint.
- 21.3.2 Staff Response:
- The proposed use will not cause significant adverse impacts on the human or natural environment. The proposed location is in close proximity to an existing community park and is considered a previously disturbed environment. This location is in close proximity to a sheriff's department substation. The county road access is from Desert Aire Drive.
- 21.4 The cumulative impact of additional requests for like actions (the total of the conditional uses over time or space) **will not** produce significant adverse effects to the environment that cannot be mitigated by conditions of approval
- 21.4.1 Applicant Response:
- Any future requests for facility improvements would be on the then existing pole or in the then existing compound and would be insignificant in impact.
- 21.4.2 Staff Response:
- The cumulative impact of additional requests for like actions will not produce significant adverse effects to the environment provided those similar requests are adequately conditioned, or have appropriate mitigation measures applied to them at the time of approval.
- 21.5 The proposal **will be** served by adequate facilities including access, fire protection, water, storm water control, and sewage disposal facilities.
- 21.5.1 Applicant Response:
- There will be no additional facilities needed for any of the listed services.
- 21.5.2 Staff response:
- This proposal will be served by adequate facilities. Access is from Desert Aire Drive. Grant County Public Works has conditioned that an approach permit be obtained for County Road access. The Fire Marshal has no adverse comments or concerns. Storm water will be handled on-site per the WA State Storm Water Manual for Eastern Washington. There is no water or sewer involved in this project.

- 21.6 The location, size, and height of buildings, structures, walls and fences and screening vegetation for the proposed use **shall not** unreasonably interfere with allowable development or use of neighboring properties.
- 21.6.1 Applicant Response:
- The access to the facility and the fenced facility itself are not within the parking lot. They are adjacent to it. The facility is set back from the road so that it will not interfere with entering or exiting the parcel.
- 21.6.2 Staff Response:
- This project will not unreasonably interfere with development or use of neighboring properties. The proposed tower complies with all the setbacks and height requirements for the county.
- 21.7 The pedestrian and vehicular traffic associated with the conditional use **will not** be hazardous to existing and anticipated traffic in the neighborhood.
- 21.7.1 Applicants Response:
- The facility is unmanned. Regular visits occur once a month. Traffic will not be impacted by this installation.
- 21.7.2 Pedestrian and vehicular traffic resulting from this project will not be hazardous to the existing traffic in the area. Application materials were sent to Grant County Public Works and they did not provide any comments of concern regarding the project. The access is off of Desert Aire Drive.
- 21.8 Land uses, activities, and structures that are allowable as conditional uses must also comply with any required performance standards in GCC § 23.08.
- 21.8.1 Applicant Response:
- Compliance with Chapter 23, Section 8 is contained herein.
- 21.8.2 Staff Response:
- The application will be conditioned so as to comply with the applicable performance standards. Appropriate conditions of approval have been suggested that will ensure compliance.
- 21.9 The proposal **does not** include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield (RCW 36.70).
- 21.9.1 Applicant Response:
- Airport compatibility has been established
- 21.9.2 Staff Response:
- This proposal is not adjacent to an airport/airfield. The proposal does not include any use or activity that would result in the siting of an incompatible use adjacent to an airport or airfield.
- 21.10 The proposal **conforms** to the standards specified in GCC § 23.12
- 21.10.1 Applicant Response:

In reviewing the permit application, the Decision Maker shall consider testimony provided at any public hearing and recommendations provided by interested and affected agencies and jurisdictions.

21.10.2 Staff Response:

The project, as conditioned, complies with all applicable development standards found in GCC § 23.12.

22. An open record public hearing after due legal notice was held on August 14, 2019.
23. The entire Planning Staff file was admitted into the record at the public hearing.
24. Appearing on behalf of the applicant was Tracy Malone. Ms. Malone testified that she was the agent of the property owner and was authorized to appear and speak on their behalf. Ms. Malone testified that the applicant concurred with the all of the representations set forth in the staff report and had no objections to any of the proposed conditions of approval.
25. No member from the public appeared at the hearing.
26. Any Conclusion of Law that is more correctly a Finding of Fact is hereby incorporated as such by this reference.

II. CONCLUSIONS OF LAW

1. The Hearing Examiner has been granted authority to render this decision.
2. As conditioned, the proposed use is consistent with the intent, purposes and regulations of the Grant County Code and Comprehensive Plan.
3. As conditioned, the proposed use will not be contrary to the intent or purposes and regulations of the Grant County Code or the Comprehensive Plan.
4. As conditioned, this proposal does comply with Comprehensive Plan, the Shoreline Master Program, the zoning code and other land use regulations, and SEPA.
5. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION

Based on the above Findings of Fact and Conclusions of Law, Conditional Use Permit Application P 19-0222 is hereby **APPROVED** subject to the following Conditions of Approval.

IV. CONDITIONS OF APPROVAL

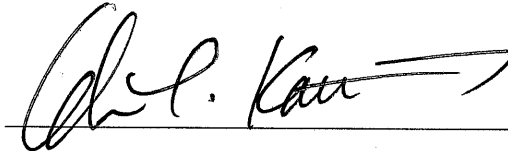
All Conditions of Approval shall apply to the applicant, and the applicant's heirs, successors in interest and assigns.

1. If any Native American Grave site(s) or archaeological/cultural resources (Indian Artifacts) are found all construction activity shall stop and the owner/developer shall immediately notify the Colville Confederated Tribes and the Washington State Office of Archaeology and Historic Preservation.
2. The applicant shall comply with all requirements as deemed necessary by the Grant County Planning Division, including but not limited to:
 - 2.1 Project shall comply with Performance and Use Standards pursuant to Grant County Code 23.08.120, including but not limited to:
 - 2.1.1 Facilities shall be located on the lot so that the distance from the base of the facility to any adjoining property line or supporting structure of another facility is at least 100 percent of the proposed facility height. Facilities that cannot satisfy this 100 percent setback may be approved provided that the applicant presents a certification from a licensed structural engineer that the structure is designed for a basic wind speed of 90 mph in accordance with the currently adopted edition of the ANSI-EIA/TIA-222E,
 - 2.2 Project shall comply with Performance and Use Standards pursuant to Grant County Code 23.12.210, including but not limited to:
 - 2.2.1 Height: The applicant shall demonstrate that the support structure is the minimum height required to function satisfactorily. No tower that is taller than this minimum height shall be approved. In no case shall support structure height exceed one hundred (100) feet, except that support structure height may not exceed two hundred (200) feet in Public Open Space (POS), Open Space Conservation (OSC) and Rural Remote (RRem) zoning districts.
 - 2.2.2 Security: Security fencing no less than six (6) feet in height with access through a locked gate shall be required around each support structure and its related equipment. Support structures shall be equipped with an appropriate anti-climbing device.
 - 2.3 Any uses for the subject parcel beyond the scope of this permit/application would require additional review and may require additional permitting from Grant County Development Services.
 - 2.4 The development authorized through this Conditional Use Permit shall be completed within five (5) years from the approval date of the permit or the approval will become null and void.
 - 2.5 Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.08, Performance and Use Standards.

- 2.6 Applicant shall comply with any/all applicable requirements found in Grant County Code Chapter 23.12, Development Standards.
3. The applicant shall comply with all requirements deemed necessary by Grant County Public Works, including but not limited to:
 - 3.1 An approach permit shall be obtained for County road access.
 - 3.2 A Work in Right of Way permit shall be obtained prior to any work being done within County road Right-of-Way.

Dated this 16th day of August, 2019.

GRANT COUNTY HEARING EXAMINER

A handwritten signature in black ink, appearing to read "A.L. Kottkamp", is written over a horizontal line.

Andrew L. Kottkamp

Anyone aggrieved by this decision has twenty-one (21) days from the issuance of this decision, to file an appeal with Grant County Superior Court, as provided for under the Judicial Review of Land Use Decisions, RCW 36.70C.040(3). The date of issuance is defined by RCW 36.70C.040 (4)(a) as "(t)hree days after a written decision is mailed by the local jurisdiction or, if not mailed, the date on which the local jurisdiction provides notice that a written decision is publicly available" or if this section does not apply, then pursuant to RCW 36.70C.040(3) (c) "...the date the decision is entered into the public record." Anyone considering an appeal of this decision should seek legal advice.